
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
AT&T Request For Waiver And
Consideration of Commission's Rate
Averaging Rules

) CC 96-61

) CCB/CPD 96-26

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COMMENTS OF SBC COMMUNICATIONS INC.

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SBC Communications Inc. ("SBC"), by its attorneys and on behalf of its subsidiaries, Southwestern Bell Communications Services, Inc. ("SBCS"), Southwestern Bell Telephone Company ("SWBT"), and Southwestern Bell Mobile Systems ("SBMS") files these comments in response to AT&T's Petition for Waiver, the Public Notice for which was released October 28, 1996 (the "Petition").

I. INTRODUCTION

Section 254(g) of the Telecommunication Act of 1996 (the "1996 Act") requires that:

the Commission adopt rules that require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

47 U.S.C. §254(g). In response, the Commission adopted a rule, now codified at 47 C.F.R. § 64.1801, that straightforwardly reformatted and restated Section 254(g) (the “Rule”). Moreover, pursuant to the Report and Order adopting the Rule, the Commission conducted a forbearance analysis under Section 10 of the Act and determined to permit time-limited, geographically-specific promotions to be offered notwithstanding the general terms of the Rule. See Implementation of Section 254(g) of the Communications Act of 1934, As Amended, Report and Order, CC Docket No. 96-61 (released August 7, 1996) at ¶ 30.

Now, based upon allegedly unique competitive conditions, and under the premise that the waiver is of the Commission’s rule limiting geographically limited interstate, interexchange service promotions to 90 days, AT&T has requested an indefinite waiver of the provisions of the 1996 Act and the Commission’s rules mandating geographic rate averaging and rate integration in two specified geographic sub-markets (the “Corridors”).

What AT&T seeks is not, in fact, a waiver to allow a “promotion.” Instead, AT&T seeks geographic rate de-averaging and rate disintegration in a discrete geographic market, specifically, the Corridors. In essence, AT&T proposes to establish a permanent, two-tiered rate structure that affords rates to its customers making calls in the Camden/Philadelphia and New Jersey/New York Corridors that are lower than those offered in rural areas and in other states. The Commission rejected this practice in its First Report and Order. See Report and Order at ¶¶ 31-41. The Commission should reject the Petition now.

II. DISCUSSION

AT&T contends that allowing carriers the additional flexibility to offer lower prices in the Corridors serves the public interest in increasing competition and fulfills the “good cause” requirement of Section 1.3 of the Commission’s rules because it meets the three-prong test of Section 10 of the 1996 Act. AT&T’s Petition at 5. AT&T attempts to substantiate its Petition by arguing that the special competitive circumstances in the Corridors provide a compelling basis for a waiver permitting all carriers, including AT&T, greater flexibility to offer prices that are lower (but not higher) than their nationally averaged rates. AT&T Petition at 2. The Petition does not prove up the forbearance standard of Section 10 of the Act any more than AT&T attempted in the context of Docket No. 96-61, and AT&T cannot avoid Section 10 by attempting to meet a less rigorous “good cause” standard. To the extent it has not and cannot establish that forbearance is appropriate, AT&T cannot establish good cause under Section 1.3 of the Commission’s Rules.

First, while AT&T argues that the deaveraged rates it wishes to charge in the Corridors are not unjustly or unreasonably discriminatory, AT&T cannot assert that a customer in a different geographic area who is not able to take advantage of such rates will not suffer the exact form of disparate treatment that Section 254(g) of the 1996 Act was intended to prevent.

Second, enforcement is not necessary for the protection of consumers benefiting from the lower, deaveraged rates (assuming AT&T would always adhere to its promise to offer its Corridor rate prices lower than their nationwide averaged rates); however, it is necessary for those customers in areas not benefiting from these lower rates. While AT&T asserts that enforcement of the rate averaging rules in the Corridors is not necessary to

protect consumers there, who already benefit from the highest degree of competition possible (AT&T Petition at 5), AT&T's argument ignores the fact that rate averaging rules were intended to protect those customers who happen to live in less competitive areas. Section 254(g) and the Commission's rules were intended to ensure that all consumers, not just those in a few geographic areas, enjoy the benefits of competition. The rules were designed to assure that: (1) all interexchange customers, including those in high cost areas or less competitive areas, enjoy reasonable interexchange rates, and (2) that customers in less competitive areas are not required to pay higher rates to subsidize those customers who happen to live in a highly competitive area.

Further, AT&T argues that because the "promotional" rates would not affect the nationwide averaged rates paid by customers in other areas, the "promotional" rates would not be unjustly or unreasonably discriminatory. AT&T Petition at 6. While the "promotional" rates allegedly would not affect the nationwide averaged rates (ignoring, of course, the fact that the "averaged" rates do not reflect the lower "promotional" rates), they treat customers not residing in the Corridors differently due only to geographic differences. Those customers (either just across the street from "Corridor" customers or across the country) will be required to pay rates greater than customers fortunate enough to live in the Corridors.

Third, the limited "benefit" served by AT&T's proposal seems to pale in comparison to the intent of the public interest provision of Section 10. AT&T asserts that competition in the Corridors is unlike competition in most other areas of the country, because all carriers, including the dominant, incumbent local exchange carrier ("LEC"), are permitted to offer interstate interLATA services. Applying AT&T's logic, once incumbent LECs are allowed to offer interstate interLATA services in-region, competition

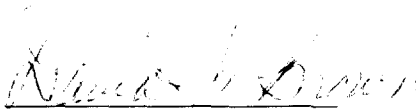
in all areas of the country would be similar to competition in the Corridors. At that time, the Corridors will be virtually indistinguishable from any other sub-markets. Even today, the Corridors may be indistinguishable from areas served by GTE or Sprint-affiliated local exchange carriers. As such, should it grant AT&T's petition, the Commission would have little choice but to grant any similar waiver in any similar geographic area, thereby eviscerating Section 254(g). A waiver such as that which AT&T seeks thoroughly undermines Section 254(g) of the 1996 Act, and cannot, therefore, be in the overall public interest.

III. CONCLUSION

Contrary to AT&T's arguments, there is no more compelling argument for allowing waiver of the rate averaging rules in the Corridors than in any other competitive interexchange route in the United States. If AT&T or other carriers are allowed to deaverage their rates in specific market areas, such as the Corridors, simply because they have "special competitive circumstances," including the presence of a BOC provider, nothing would prevent AT&T or other interexchange carriers from making similar arguments in other competitive interexchange routes, thus dismantling the Commission's and the 1996 Act's geographic rate averaging and rate integration provisions. AT&T has not established through the Petition that it could meet any of the three prongs of the forbearance analysis any more than it did so in the context of Docket No. 96-61. To the extent it has not and cannot establish that forbearance is appropriate, it cannot establish good cause under Section 1.3 of the Commission's Rules. AT&T has made no argument and presented no evidence of circumstances not squarely within the Commission's contemplation when it adopted the Report and Order, and the Petition should be rejected.

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